

United States Senate

WASHINGTON, DC 20510

July 10, 2009

The Honorable Hillary Rodham Clinton
Secretary of State
2201 C Street, N.W.
Washington, D.C. 20520

Dear Secretary Clinton:

We write to you regarding the proposed U.S. accession to the Treaty of Amity and Cooperation in Southeast Asia (TAC). We believe that U.S. accession to the TAC reflects the strong American commitment to the region and to vigorous engagement with the Association of Southeast Asian Nations (ASEAN), both of which we fully support. The U.S. has important foreign policy and economic interests in Southeast Asia which we believe this agreement can further.

There are two important points of clarification, however, that we wish to make as part of the Senate's input in the context of the State Department's congressional consultations. First, we understand that the Department is considering having the United States accede to the TAC in late July as a sole executive agreement, which would not require the advice and consent of the Senate. We note that the title of the agreement refers to the agreement as a "treaty," and we are unaware of any precedent for the United States acceding to an agreement styled as a "treaty" without the advice and consent of the Senate as provided for in Article II, Section 2 of the Constitution. At the same time, we are mindful that other factors apart from the formal name of the agreement could suggest that it is consistent with U.S. practice for the United States to accede to the TAC as an executive agreement. Of particular importance, the agreement is largely limited to general pledges of diplomatic cooperation and would not appear to obligate the United States to take (or refrain from taking) any specific action (with the exception of provisions of Article X which we understand will be the subject of a reservation as discussed below). We also note that the United States did not take part in the negotiations among ASEAN countries leading up to the conclusion of the TAC in 1976, or in the decision to characterize it as a treaty.

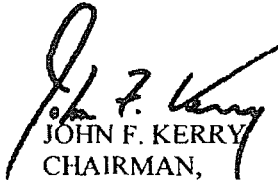
In light of these unique considerations, we will not object to the Department's plan to accede to the TAC as an executive agreement. We continue to believe, however, that the use of the term "treaty" in the title of an agreement will generally dictate that Senate advice and consent will be required before the United States may accede to the agreement. In this regard, treatment of the TAC as an executive agreement should not be considered a precedent for treating future agreements entitled "treaties" as sole executive agreements. To ensure our understanding that the process surrounding this agreement is not misinterpreted in the future as a precedent, we will submit this letter into the *Congressional Record*. We would also request that the State Department include it in the next edition of the *Digest of United States Practice in International Law*.

Second, Article X of the TAC provides that "[e]ach High Contracting party shall not in any manner or form participate in any activity which shall constitute a threat to the political and economic stability, sovereignty, or territorial integrity of another High Contracting Party." We also note that the U.S. has proposed a reservation to the TAC that states that the TAC, noting in particular Article X, "does not limit actions taken by the United States that it considers necessary to address a threat to its national interests."

We interpret this reservation as ensuring that the TAC does not limit the authority of the U.S. government—either the executive branch or the Congress—to take actions that it considers necessary in pursuit of U.S. national interests in the region or with respect to any individual nation.

We thank you for your close consideration of this matter and for the Department's consultation prior to acceding to the TAC.

Sincerely,



JOHN F. KERRY
CHAIRMAN,
SENATE COMMITTEE ON
FOREIGN RELATIONS



MITCH McCONNELL
REPUBLICAN LEADER
UNITED STATES SENATE



RICHARD G. LUGAR
RANKING MEMBER
SENATE COMMITTEE ON
FOREIGN RELATIONS